

---

STATUTORY INSTRUMENTS

---

**1995 No. 3213**

**The Pensions (Northern Ireland) Order 1995**

**PART II**

**OCCUPATIONAL PENSIONS**

*Employee trustees*

**Right not to suffer detriment in employment or be unfairly dismissed**

**46.**—(1) Subject to paragraph (2), an employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that, being a trustee of a trust scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.

(2) Paragraph (1) does not apply where the detriment in question amounts to dismissal, except where an employee is dismissed in circumstances in which, by virtue of Article 25 of the No. 1 Order, Article 20 of that Order does not apply to the dismissal.

(3) Articles 13B and 13C of the No. 2 Order (which relate to proceedings brought by an employee on the ground that he has been subjected to a detriment in contravention of Article 13A of that Order) shall have effect as if the reference in Article 13B(1) to Article 13A included a reference to paragraph (1).

(4) In the following provisions—

Article 71 of, and Schedule 4 to, the No. 1 Order (death of employee or employer),

Article 49(2) (except sub-paragraph (b)) of the No. 2 Order (employee ordinarily working outside Northern Ireland), and

Article 56(1) of the No. 2 Order (remedy for infringement of rights conferred by the Order),

any reference to the No. 2 Order, or any provision of that Order, includes a reference to paragraph (1).

(5) The dismissal of an employee by an employer shall be regarded for the purposes of Part III of the No. 1 Order as unfair if the reason (or, if more than one, the principal reason) for it is that, being a trustee of a trust scheme which relates to his employment, the employee performed (or proposed to perform) any functions as such a trustee.

(6) Where the reason or the principal reason for which an employee was selected for dismissal was that he was redundant, but it is shown—

(a) that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and

(b) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was that specified in paragraph (5),

then, for the purposes of Part III of the No. 1 Order, the dismissal shall be regarded as unfair.

(7) Article 20 of the No. 1 Order (right of employee not to be unfairly dismissed) applies to a dismissal regarded as unfair by virtue of paragraph (5) or (6) regardless of the period for which the employee has been employed and of his age; and accordingly Article 24(1) of that Order (which provides a qualifying period and an upper age limit) does not apply to such a dismissal.

(8) Any provision in an agreement (whether a contract of employment or not) shall be void in so far as it purports—

- (a) to exclude or limit the operation of any provision of this Article, or
- (b) to preclude any person from presenting a complaint to an industrial tribunal by virtue of any provision of this Article.

(9) Paragraph (8) does not apply to an agreement to refrain from presenting or continuing with a complaint where—

- (a) a conciliation officer has taken action under Article 62(2), (3) or (5) of the No. 1 Order (conciliation), or
- (b) the conditions regulating compromise agreements under the No. 2 Order (as set out in Article 59(3) of that Order) are satisfied in relation to the agreement.

(10) In this Article—

“dismissal” has the same meaning as in Part III of the No. 1 Order;

“the No. 1 Order” means the Industrial Relations (Northern Ireland) Order 1976(1);

“the No. 2 Order” means the Industrial Relations (No. 2) (Northern Ireland) Order 1976(2).

(11) Article 2 of the No. 1 Order and Article 2 of the No. 2 Order (general interpretation), have effect for the purposes of this Article as they have effect for the purposes of those Orders.

---

(1) 1976 NI 16.  
(2) 1976 NI 28.